

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
)	CIVIL ACTION
SPIRIT AIRLINES, INC.,)	
)	Docket No. 1:07-cv-00341-SLR
Plaintiff,)	
)	
vs.)	
)	
24/7 REAL MEDIA, INC., ADVERTISING.COM,)	
INC., AMERICA ONLINE, INC. dba AOL, BURST)	
MEDIA CORORATION, CARROLLTON BANK,)	
CHEAPFLIGHTS (USA), INC., ECHO TARGET,)	
INC., HOTWIRE, INC., INTERCEPT)	
INTERACTIVE, INC., PRICELINE.COM, LLC,)	
RACKSPACE, LTD., SHERMANS TRAVEL, INC.,)	
SIDESTEP, INC., SMARTER LIVING, INC.,)	
SPECIFICMEDIA, INC., TRAVEL MARKETING)	
GROUP, INC., TRAVELZOO, INC., TRIBAL)	
FUSION, INC., TRIPADVISOR LLC,)	
VALUECLICK, INC., AND WEATHER CHANNEL)	
INTERACTIVE, INC.,)	
)	
Defendants.)	

DEFENDANT, WEATHER CHANNEL INTERACTIVE, INC.'S
RESPONSE TO COMPLAINT FOR INTERPLEADER,
AFFIRMATIVE DEFENSES AND COUNTERCLAIMS

COMES NOW DEFENDANT, THE WEATHER CHANNEL INTERACTIVE, INC.

(hereinafter "the Weather Channel"), by and through its undersigned counsel, who responds to the Complaint for Interpleader brought by SPIRIT AIRLINES, INC. as follows:

1. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 1, and it is therefore denied.
2. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 2, and it is therefore denied.
3. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 3, and it is therefore denied.

4. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 4, and it is therefore denied.

5. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 5, and it is therefore denied.

6. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 6, and it is therefore denied.

7. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 7, and it is therefore denied.

8. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 8, and it is therefore denied.

9. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 9, and it is therefore denied.

10. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 10, and it is therefore denied.

11. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 11, and it is therefore denied.

12. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 12, and it is therefore denied.

13. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 13, and it is therefore denied.

14. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 14, and it is therefore denied.

15. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 15, and it is therefore denied.

16. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 16, and it is therefore denied.

17. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 17, and it is therefore denied.

18. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 18, and it is therefore denied.

19. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 19, and it is therefore denied.

20. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 20, and it is therefore denied.

21. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 21, and it is therefore denied.

22. Admitted.

JURISDICTION AND VENUE

23. Admitted.

24. Admitted.

25. Admitted.

26. Admitted.

FACTS

A. Agreement Between Eisner and SPIRIT AIRLINES, INC.

27. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 27, and it is therefore denied.

28. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 28, and it is therefore denied.

29. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 29, and it is therefore denied.

30. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 30, and it is therefore denied.

31. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 31, and it is therefore denied.

32. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 32, and it is therefore denied.

33. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 33, and it is therefore denied.

34. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 34, and it is therefore denied.

35. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 35, and it is therefore denied.

36. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 36, and it is therefore denied.

B. Communications SPIRIT AIRLINES, INC. Received From Carrollton Bank and Other Defendants

37. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 37, and it is therefore denied.

38. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 38, and it is therefore denied.

39. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 39, and it is therefore denied.

40. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 40, and it is therefore denied.

41. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 41, and it is therefore denied.

42. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 42, and it is therefore denied.

43. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 43, and it is therefore denied.

44. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 44, and it is therefore denied.

45. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 45, and it is therefore denied.

46. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 46, and it is therefore denied.

47. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 47, and it is therefore denied.

48. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 48, and it is therefore denied.

49. Admitted only in that the Weather Channel is owed payments in the amount of \$22,000.02. The Weather Channel is without knowledge of the facts contained in the balance corresponding Paragraph 49, and it is therefore denied.

50. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 50, and it is therefore denied.

51. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 51, and it is therefore denied.

52. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 52, and it is therefore denied.

53. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 53, and it is therefore denied.

54. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 54, and it is therefore denied.

55. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 55, and it is therefore denied.

56. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 56, and it is therefore denied.

57. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 57, and it is therefore denied.

58. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 58, and it is therefore denied.

59. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 59, and it is therefore denied.

60. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 60, and it is therefore denied.

61. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 61, and it is therefore denied.

62. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 62, and it is therefore denied.

63. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 63, and it is therefore denied.

C. Deposit of Funds

64. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 64, and it is therefore denied.

65. Admitted that \$22,000.02 is owed to The Weather Channel. The Weather Channel is without specific knowledge as to the balance of the facts contained in corresponding Paragraph 65, and it is therefore denied.

66. Admitted that \$22,000.02 is owed to The Weather Channel. The Weather Channel is without specific knowledge as to the balance of the facts contained in corresponding Paragraph 66, and it is therefore denied.

67. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 67, and it is therefore denied.

68. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 68, and it is therefore denied.

69. No response is required as to the averments contained in corresponding Paragraph 69, and it is therefore denied.

COUNT ONE

**Interpleader under 28 U.S.C. A. Section 1335 and
Rule 22 of the Federal Rules of Civil Procedure**

70. The Weather Channel repeats and alleges to each of the responses to every allegation contained in Paragraphs 1 through 69.

71. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 71, and it is therefore denied.

72. No response is required as to the averments contained in corresponding Paragraph 72, and it is therefore denied.

73. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 73, and it is therefore denied.

74. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 74, and it is therefore denied.

75. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 75, and it is therefore denied.

76. The Weather Channel is without specific knowledge as to the facts contained in the corresponding Paragraph 76, and it is therefore denied.

77. No response is required as to the averments contained in corresponding Paragraph 77, and it is therefore denied.

78. No response is required as to the averments contained in corresponding Paragraph 78, and it is therefore denied.

79. The Weather Channel specifically denies the averments contained in corresponding Paragraph 79.

80. No response is required as to the averments contained in corresponding Paragraph 80, and it is therefore denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiff is not entitled to recovery of reasonable attorney's fees and costs.

Second Affirmative Defense

This interpleader does not preclude liability of Plaintiff, SPIRIT AIRLINES, INC.

COUNTERCLAIMS

First Cause of Action **(Breach of Contract)**

1. At the request of SPIRIT AIRLINES, INC. ("Plaintiff"), through its authorized agent Eisner Interactive, The Weather Channel agreed advertise for in exchange for payment.

2. The Weather Channel displayed Plaintiff's advertising in accordance with the agreement and otherwise fulfilled all of its obligations under the agreement.

3. Plaintiff breached the agreement by failing to pay The Weather Channel all of the fees due in exchange for The Weather Channel displaying Plaintiff's advertising.

4. As a result of Plaintiff's breach, The Weather Channel has been damaged in an amount to be determined at trial, but presently believed to be in excess of \$22,000.02.

Second Cause of Action **(Unjust Enrichment)**

5. The Weather Channel repeats and realleges the allegations contained in paragraphs 1 through 4 above as though fully set forth herein.

6. Plaintiff unjustly enriched itself by (a) receiving the benefits of the Weather Channel displaying Plaintiff's advertising, and (b) improperly failing to pay the Weather Channel its fees for such advertising displays.

7. By reason of the foregoing, Plaintiff has been unjustly enriched at the expense of the Weather Channel, and the Weather Channel is entitled to recover from Plaintiff, an amount to be determined at trial, but presently believed to be in excess of \$22,000.02.

CONCLUSION

WHEREFORE, Defendant, the Weather Channel respectfully requests that the Court:

- (a) determine the portion of the Eisner Funds which is due to Defendant;
- (b) enter judgment against Plaintiff on its claim for attorneys' fees and costs;
- (c) enter judgment in Defendant's favor on its Counterclaims against Plaintiff; and
- (d) grant Defendant such other and further relief as the Court deems just and proper.

Respectfully submitted,

_____/s/ Adam R. Elgart_____
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Dated: 6/7/07